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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ENPAC, LLC,

9 Plaintiff,

10 v.

11 CHASSIDY F. LUCAS, individually and
12 d/b/a CB Stormwater, a Washington sole
proprietorship,

13 Defendant.

14
15 CASE NO. C11-37 BHS

16 ORDER GRANTING
17 PLAINTIFF'S MOTION FOR
18 SANCTIONS AND ORDERING
19 DEFENDANT TO SHOW CAUSE

20 This matter comes before the Court on Enpac, LLC's, ("Enpac") motion to compel
21 (Dkt. 114) and motion for sanctions (Dkt. 125). The Court has considered the pleadings
22 filed in support of and in opposition to the motions and the remainder of the file and
hereby grants the motion for sanctions for the reasons stated herein.

23 I. PROCEDURAL HISTORY

24 On January 7, 2011, Enpac filed a complaint against Defendants Chassidy Lucas
25 ("Defendant") and a limited liability corporation, which Defendant has dissolved and
26 now operates as a sole proprietorship. Dkt. 1. Enpac asserted three causes of action: (1)

1 request for declaratory judgment that Enpac's products do not infringe U.S. Pat. No.
 2 7,771,591 (hereinafter "the '591 patent"), which was issued to Defendant; (2) request for
 3 declaratory judgment that the '591 patent is invalid and/or unenforceable; and (3)
 4 violations of the Lanham Act, 15 U.S.C. § 1051, *et seq.* *Id.*

5 On May 3, 2012, Enpac filed a motion to compel discovery. Dkt. 114. Defendant
 6 did not file a timely response. On May 18, 2012, Enpac replied. Dkt. 117. On May 30,
 7 2012, Defendant filed a response. Dkt. 120. On May 31, 2012, Enpac objected to
 8 Defendant's late response (Dkt. 121), and Defendant responded to Enpac's objection
 9 (Dkt. 122).

10 On June 21, 2012, Enpac filed a motion for sanctions. Dkt. 125. On July 2, 2012,
 11 Defendant responded. Dkt. 127. On July 5, 2012, Enpac replied. Dkt. 129. On July 7,
 12 2012, Defendant filed another response. Dkt. 130.

13 II. FACTUAL BACKGROUND

14 On February 10, 2012, Enpac served Enpac's First Set of Interrogatories, Enpac's
 15 First Requests for Production and Enpac's First Requests for Admission on Defendants
 16 by mailing the same via First Class U.S. Mail to the mailing address that, at the time,
 17 Defendants had most recently provided to the Court for service. Dkt. 115, Fifth
 18 Declaration of Randolph Digges, ¶ 3. On March 8 and 9, 2012, after Defendant informed
 19 Enpac's counsel that these discovery requests were not received, Enpac provided
 20 electronic versions of the requests. *Id.*, ¶¶ 5, 6.

21 Defendant responded to the requests by email and attached four documents. *Id.*,
 22 Exhs. 2–5. Enpac informed Defendant that the responses were inadequate. After

1 Defendant's repeated refusal to confer and threats of suing (*id.*, Exhs. 7 & 8), Enpac filed
2 its motion to compel.

3 On June 4, 2012, Enpac's attorney, Randolph Digges, sent Defendant an email
4 indicating that the previously discussed deposition of Defendant would commence at
5 10:00 a.m. on June 15, 2012 at Capitol Pacific Reporting, Inc., 901 South I Street, Suite
6 202, Tacoma, Washington 98405. Dkt. 126, Sixth Declaration of Randolph Digges, ¶ 5.
7 Attached to the email was a Notice of Deposition subpoena. *Id.*, Exh. 4.

8 On June 15, 2012, Defendant did not attend the deposition. *Id.*, ¶ 16.

9 III. DISCUSSION

10 If a party fails to respond to discovery requests, the opposing party may file a
11 motion to compel production. Fed. R. Civ. P. 37. Evasive or incomplete disclosure must
12 be treated as a failure to respond. *Id.* If a party fails to attend its own deposition, then,
13 upon motion, the Court may impose sanctions up to and including entry of default
14 judgment against the party who failed to attend the deposition. Fed. R. Civ. P. 37.

15 In this case, there is no dispute that Defendant both failed to respond to discovery
16 requests and did not attend the scheduled deposition.¹ Therefore, the Court grants
17 Enpac's motions and will impose sanctions. The Court is considering entering the
18 sanction of an entry of default judgment for Enpac. The Court finds that Defendant has
19 asserted no legitimate reason for the discovery violations and that the imposition of less

20 _____
21 ¹ In fact, Defendant used the scheduled deposition to serve opposing attorneys with a new
22 lawsuit, which has been found to be frivolous and dismissed *sua sponte*. See *Lucas v. Bomsztyk*,
Western District of Washington Cause No. 3:12-cv-05487-BHS (2012).

1 drastic sanctions will not result in resolution of this action on the merits. For example,
2 requiring Empac's counsel to attend another deposition may only give Defendant the
3 opportunity to serve them with another frivolous lawsuit. In light of the severity of the
4 Court's proposed sanction, the Court will allow Defendant an opportunity to show cause
5 why the failure to respond to discovery or to attend the deposition was not willful
6 disobedience. Depending on Defendant's response, the Court may order the entry of
7 default judgment against Defendant. If Defendant fails to respond, the Court will order
8 the entry of default judgment against Defendant.

IV. ORDER

10 Therefore, it is hereby **ORDERED** that Enpac's motion for sanctions is
11 **GRANTED**. Defendant must show cause as requested herein no later than July 27,
12 2012. If the Court does not enter default judgment, the Court will issue a ruling on the
13 motion to compel.

Dated this 20th day of July, 2012.



BENJAMIN H. SETTLE
United States District Judge